



10/772,397
(ATTORNEY DOCKET NUMBER: 41563-0010)

Remarks

This Reply is in response to the Office Action mailed August 3, 2005, and also responds to the Notice of Non-Compliant Amendment mailed October 6, 2005. Claims 41-52 were pending in the application. No claims are amended or canceled. Thus, claims 41-52 are pending for reconsideration at this time.

Applicants thank the Examiner for allowing claims 42-46 and 48-52.

In response to the Notice of Non-Compliant Amendment, this amended Reply adds to the Listing of Claims a reference to claims 1-40 as being cancelled.

In the Office Action, claims 41 and 47 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 11 of U.S. Patent No. 6,706,016 to Cory et al. Applicants respectfully traverse these rejections for at least the following reasons.

The present application is a divisional of U.S. Application No. 9/989,206 which issued as U.S. Patent No. 6,706,016 ("the '016 patent"). A Requirement for Restriction was issued on September 25, 2002 for Application No. 9/989,206 in which the Examiner stated that claims "comprising marks" were a patentably distinct species. Applicants timely traversed the restriction in a reply dated October 9, 2002, but the Examiner deemed the restriction proper and final and withdrew claims 10-15, 27, and 30-34 in an Office Action mailed December 12, 2002. For the convenience of the Examiner, a copy of the Requirement for Restriction and the Office Action of December 12, 2002 affirming the restriction from the '016 patent are attached. Before issuance of the '016 patent, Applicants timely filed the present divisional application to pursue the subject matter of the non-elected claims. Specifically, claims 41 and 47 recite the same subject matter as the non-elected claims 10 and 27 of Application No. 9/989,206, respectively, redrafted in independent form.

Applicants respectfully direct the Examiner's attention to 35 U.S.C. § 121 and MPEP 804.01 regarding the rejection of a divisional application as obvious in view of a parent application. As explained in that section of the MPEP, 35 U.S.C. § 121 prohibits the rejection of a divisional application based upon its parent as part of an obviousness-type double patenting rejection. The line of demarcation between the independent and distinct

inventions identified by the Examiner in the Requirement for Restriction, namely "marks," is maintained, because claims 41 and 47 of the present application recite identical subject matter to the restricted and withdrawn claims and claims 1 and 11 of the '016 patent do not recite "marks." Therefore, Applicants respectfully submit that the rejections of claims 41 and 47 are improper, and respectfully request withdrawal of the obviousness-type double patenting rejection of claims 41 and 47.

Conclusion

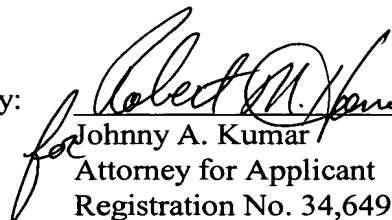
In view of the above remarks, Applicants respectfully request that all rejections be withdrawn and that a notice of allowance be forthcoming. The Examiner is invited to contact the undersigned for any reason related to the advancement of this case.

The Commissioner is authorized to credit any over payment or charge any deficient to deposit account number 08-1641.

Respectfully submitted,

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